IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 1738 OF 1997

Bharat Dharmaji Bawadhankar,)
residing at 1004, Kasba Peth,)
Pune 411 011.) Petitioner

Vs.

1) M/s. Bajaj Auto Ltd.,)
having registered office)
at Akurdi, Pune 411 035.)
)
2) Presiding Officer,)
1st Labour Court, Pune) Respondents

Mr. S. M. Dharap, advocate for the petitioner.

Mr. P. K. Dhakephalkar with Niranjan Shimpi, advocates for the respondent No. 1.

CORAM: Smt. NISHITA MHATRE, J.

DATE : SEPTEMBER 11, 2007.

ORAL JUDGMENT

. The petitioner challenges the award of the Labour Court, passed in Reference (IDA) No. 120 of 1988. By this award, the Labour Court has rejected the reference.

2. The facts in this case are not in dispute. The petitioner was an office bearer of Trade Union, representing the workmen employed in

the respondent factory at Pune. He was issued a charge sheet on 4th July 1979. Three specific acts of misconduct were alleged against him. The respondent had alleged that the petitioner had misrepresented and the workmen of the Engine Assembly and Automobile Department that one of their co-workers had been charge sheeted. He instigated the the workmen to commit acts of violence, criminal trespass, criminal assault, riot, criminal mischief and arson. This led to a large scale damage of the respondent No.1's property. It was also alleged that the petitioner had stopped work in the department and instigated others in the department to accompany him for a meeting with the General Manager. It is alleged that after returning from the meeting, the petitioner incited the workmen to indulge in further acts of violance, due to which there was large scale destruction of the property of the respondent No.1 Company. The petitioner was therefore, charged for having committed acts of misconduct under 24(a), 24(b), 24(t), 24(l) and 24(q) of the Model Standing Orders.

3. The Inquiry was instituted against the

petitioner wherein he was found guilty of the charges levelled against him. Consequently, the petitioner was dismissed from service. He raised an industrial dispute, demanding reinstatement in service with continuity and backwages. This dispute was referred for adjudication to the 1st Labour Court Pune, vide Reference (IDA) No. 87 of 1984.

4. The Labour Court framed the preliminary issues, as to whether the Inquiry conducted against the petitioner was fair and proper and whether the findings of the Inquiry Officer were perverse. The Labour Court held that the petitioner had proved that the Inquiry was conducted in consonance with the principles of natural justice and fair play and that the findings of the Inquiry Officer were perverse.

5. Aggrieved by this award passed by the Labour Court, the respondent Company approched this Court under Article 227 of the Constitution of India, by filing Writ Petition No. 4648 of 1988. This Writ Petition was decided on 3rd April 1995. It was held that the Labour Court was right in

deciding that the Inquiry was held in accordance with the principles of natural justice and the Model Standing Orders applicable. However, on the perversity of the findings of the Inquiry Officer, this Court diferred with the view taken by the Labour Court. It was held that the misconduct against the petitioner workman had been proved at the enquiry. Therefore, the award passed by the Labour Court was quashed and set aside with respect to the perversity of the findings of the Inquiry Officer. While doing so, this Court noted that the petitioner had been convicted for the acts of violence in the company premises, along with several of his co-workers by the Criminal Court. The conviction was upheld by this Court. However, instead of the sentence of imprisonment which was imposed by the trial Court, this Court directed payment of Rs. one lakh as a fine. The Supreme Court reduced the fine to Rs.10,000/-. The respondent company was therefore given liberty by this Court while deciding the Writ Petition to file copies of judgments of the Criminal Court, this Court and the Supreme Court in the proceedings before the Labour Court. The submission of the learned advocate for the petitioner that the

petitioner had been discriminated was also to be considered by the Labour Court, while dealing with award Part-II. The learned judge had observed -

> "Mr. Dharap, learned Advocate for the respondent, however, states that though several workmen were dismissed on identical charges, there was discrimination practiced against the respondent by the petitioner in that suit, while several workmen who were equally guilty were taken back in employment, the respondent has not been taken back in employment. The respondent is at liberty to lead appropriate evidence on this issue before the Labour Court. Such evidence, if adduced, shall be taken into consideration by the Labour Court for deciding the issue of relief."

6. The parties led evidence before the Labour Court. The petitioner attempted to establish that out of 31 employees who were convicted by the Sessions Courts for the same acts, which were alleged against the petitioner, 15 were

dismissed. However, one employee out of these 15 was later given employment by the respondent company. The Personal Manager of the respondent was examined before the Court. In his examination in chief, he has stated:

> Out of 31 employees, who were convicted by the Court, some of them are still in our employment, because those persons were prosecuted by the police for the incident occurred out in the company. Whereas the 15 persons were charge sheeted for the incident took place as on 16th June 1979. The employees those hae been dismissed by the first party are not taken bank in the employment. However, 14 employees were approached the first party-company, and on considering their request, they had submitted their resignations. Thereafter all of them were given priority by allotting the rickshaws on payment. At present, one Shri Parghane is not in our employment. However, as per the request, he was taken back in the employment because his

financial position was not sound, however, he subsequently terminated from the employment.

7. The Labour Court by its award Part-II has concluded that the punishment imposed on the petitioner was proportionate and justifiable. The Labour Court held that there was no discrimination between the petitioner and the other employees, who were involved in the same incident and who were also convicted. The Labour Court concluded: "the employees who had been convicted for acts of violance which were committed outside the factory premises, are taken back in the employment, whereas the petitioner and the rest of the workers had committed the acts of violance with the premises of the establishment were dismissed." The Labour Court observed that none of those who have committed acts of violance within the premises had been re-employed. The Labour Court also observed that the petitioner and 6 other workmen were fined Rs. 10,000/- which was the maximum fine, whereas the others have not been treated in a similar fashion by the Criminal Court and the Supreme Court. The Labour Court has also considered the past service

record of the petitioner and has held that there were no mitigating factors which would lead it to conclude that the petitioner deserved a lesser punishment.

8. Mr. Dharap, the learned advocate for the petitioner submits that the Labour Court while while passing the Award Part-II has framed wrong issues. According to the learned advocate, after the judgment in Writ Petition 4648 of 1988, wherein this Court had held that the Labour Court should consider the issue of discrimination, the Labour Court ought to have framed such an issue. The learned advocate urges that the very fact that the Labour Court has not framed such an issue would indicate that it has not applied its mind to the issue of discrimination, despite the directions of this Court, and therefore, the award is required to be set aside. The learned advocate then submits that even assuming it is found that the Labour Court has considered the issue of discrimination, it has not considered the same in the proper perspective. He submits that the Labour Court was impressed by the fact that 15 employees had committed acts of violance outside factory

premises. These employees had been considered differently by the respondent company by permitting them to purchase rickshaws from the company on a priority basis, after accepting their resignations. The learned advocate submits that such an offer should have been made by the company to the petitioner as well since in view of the judgment in the case of **Munchandani Electrical and Radio Industries Ltd. Vs. Their Workmen, reported in 1975(1) LLJ 390.** The Supreme Court considers all misconducts whether committed inside the factory premises outside factory premises, similarly. He submits therefore, that the respondent ought to have given him the same facilities as the other workmen.

9. The submission of the learned advocate for the petitioner cannot be countenanced for more than one reason. It is true that the Labour Court has not framed the issue regarding discrimination. However, a perusal of the award indicates the Labour Court has considered the issue as evidence was led on this issue. It is undisputed that the misconduct has been proved against the petitioner. Therefore, the only question which the Labour Court

was called upon to decide was whether the punishment imposed by the respondent Co. was commensurate with the misconduct committed by petitioner. While doing so, the Labour Court was expected to consider whether there was any discrimination in the treatment of the other workmen and the petitioner by the respondent. The evidence on record indicates that 51 workmen were prosecuted, when 31 were convicted and were sentenced to suffer 3 years rigorious imprisonment and to a pay fine of Rs. 500/- by the Sessions Court. The petitioner was also similarly convicted. The workman preferred an appeal against his conviction in this Court and the punishment imposed was reduced to a fine of Rs. one lakh, in default 3 years rigorous imprisonment. Aggrieved by this decision of the High Court, the workman filed an appeal before the Supreme Court. The Supreme Court has reduced the fine to Rs. 10,000/-. Thus, out of 41 employees who were convicted including the petitioner, six of them were fined a maximum of Rs.10,000/-. Fifteen of the charge sheeted workmen who had been convicted were not taken in employment. But since 14 of them approached the respondent company to consider their

request to permit them to resign from duty, the respondent company agreed to do so. They were also offered allotment of rickshaws by the respondent. One of the employees was re-employed in 1996 because his financial position was not sound. However, he has been subsequently terminated from the service. The Labour Court has considered all these factors and found that the petitioner had not suffered any discrimination at the hands of the respondent company. The Labour Court has therefore, in my view, correctly considered the issue regarding discrimination and found that the petitioner was not treated differently. Assuming the acts of violance committed by the workman outside the factory premises and those committed by workmen within the factory premises are to be treated at par, in my opinion, in the present case there is no discrimination at all, since the past service record of the petitioner did not allow him to be treated in the same fashion and the 15 who were permitted to resign. Admittedly warnings had been issued to the petitioner on three earlier occasions for certain acts of misconduct. In the light of these factors, the Labour Court has rightly concluded that the petitioner did not

deserve any other punishment but that of dismissal.

10. The judgment cited by the learned advocate for the petitioner in the case of **Tata Engineering & Locomotive Co. Ltd. Vs. Jitendra Pd. Singh & Anr.,** reported in **(2001) 10 Supreme Court Cases 530** based on the attending facts in that case and has no relevance to the present case. In my view there is sufficient evidence on record to indicate that the punishment of dismissal was commensurate with the misconduct committed by the workman. He had indulged in violance & large scale destruction of the employer’s property. There is no disparity in the treatment given to the petitioner and the other workmen by the respondent company. The petition therefore, fails. Rule discharged, no order as to costs.

Sd/-
[Smt. NISHITA MHATRE, J.]